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## FEATURES OF SOCIO-PSYCHOLOGICAL DEVELOPMENT OF THE PERSON AS THE BASIS THE EMERGENCE OF CRIMINAL LIABILITY

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Clarifying the socio-psychological aspect of a person always involves study of the patterns of formation of a certain internal structure person and its performance as a regulator of behavior. The formation of this structure of the person occurs gradually from the moment of its birth under the influence of various factors.

To be the subject of any social relationship, man must reach a certain level of psychophysical and social development, which will enable her to be aware of and control her behavior, and therefore be responsible for it.

Such is the gradual development of man as a conscious subject of society life, determines the attempts of the legislator to establish as one of the guarantees the principle of culpable liability, its age limits. Thus the legislator tries to exclude from the scope of criminal law measures children and adolescents, whose typical level of development generates irrefutable doubts that they are in the commission of acts prohibited by criminal by law, were aware of the nature and significance of their actions or guided them in situations of choice.

Neither the Criminal Code of 1960 nor the Criminal Code of 2001 provide for any features criminal liability for persons aged 18 to 21 (mature youth). However, this is the approach of the Ukrainian legislator to this category of persons can hardly be considered correct. Today, when Ukraine is trying to integrate with the international community, the latter requires the harmonization of national legislation in accordance with international standards. These standards are enshrined in the international legal acts of the universal character. One of the most important acts that determine the basic principles of criminal liability of minors are Minimum UN standard rules concerning the administration of justice minors (Beijing Rules). In item 3.1. of these Rules states that States must make efforts to disseminate the principles set out in the Rules, on young adult offenders [14, p. 286]. Therefore, the amendment of the Criminal Code by such an instruction will be in full compliance with the Beijing Code rules.

**Key words:** responsibility; person; punishment; offender; crime.

**Problem statement.** Clarifying the socio-psychological aspect of a person always involves study of the patterns of formation of a certain internal structure person and its performance as a regulator of

behavior. The formation of this structure of the person occurs gradually from the moment of its birth under the influence of various factors.

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**Analysis of publications that started solving this problem.** Research of the socio-psychological development of the person as the basis the emergence of criminal liability has been carried out by many researchers, for example, V. Radetskyi, V. Moroz, O. Sitkovskaya, N. Dubinin and others.

**The article's objective** is to study the essence of the principle of the socio-psychological development of the person as the basis the emergence of criminal liability in the theory and practice of criminal law of Ukraine.

**Basic content.** The question of determining the first age from which it is possible criminal liability, and the criteria to be used by the legislator has never found its unambiguous solution.

Different points of view are known about this. In general, they can be grouped in three directions:

1. Proponents of the first believe that the first age from which it can crimina liability must occur, must be the age of sexuality maturity.

2. Others note that the legislator in setting the minimum age of criminal responsibility should not use not only data of physiology and psychology, but also take into account social and ethnographic living conditions.

3. Representatives of the third direction believe that the determining factor in there are social factors in this regard.

Without analyzing in detail each of these areas, we note that it is generally accepted that the formation of a person takes place in the dialectical unity of biological and social factors. Their ratio in the formation the person is not yet revealed in all its manifestations. It is recognized only that the social, which is gradually formed in man, mobilizes its biological features, necessary for the implementation of differentiated behavior [2, p. 191].

Socialization occurs under the influence of various factors social environment in accordance with the functioning of certain socio-psychological mechanisms of assimilation of social information. In sociological literature is considered the main criterion of socialization age [3, p. 136].

Since the process of personality formation is social from the very beginning, then. It is clear that in the study of the formation of a person as a subject of criminal legal relations, the main criterion for such formation can and should recognize the age of the person.

Today, along with acceleration, there is an accelerated process social growth. This is caused, in particular, by a large amount of variety the kind of information provided to children, free access to it through various sources. As a result, modern children are very early to realize themselves as members of society, trying to try themselves as a subject of certain social relations.

However, such acceleration is due to a number of negatives factors. Modern children grow up quickly and become involved in adult life in some cases against their will.

Today in Ukraine the problem is quite serious homeless children. "The street allows its children to watch society, without joining the system of its values"[4, p. 39]. According to the data Ministries of

Education 12 thousand children aged 7 to 15 do not study anywhere, and therefore, their upbringing takes place mainly on the street [5, p. 13].

Under such conditions, in some cases, the socialization of a minor may occur under the dominant influence of biological factors, which in turn will make criminal liability questionable if committed by him socially dangerous act. After all, responsibility as a social form influence on human behavior is possible and effective only when it has socially conditioned nature [6, p. 45].

It should also be noted that in the absence of censorship and free access to various kinds of information, minors easily assimilate certain immoral stereotypes of behavior, which in the end can lead to committing offenses. Studies show that violence and terror that appear in the media, injuring children and undermine the foundations of society, psychologists conduct numerous experiments that indicate that the constant display of violence contributes to the growth of aggression, heartlessness in some and a sense of isolation in others, many have horror, and for some it leads to violence [7, p. 37].

As the time spent by minors outside increases family and school, the share of communication with peers is growing, which is very often dominated by the influence of teachers and parents. It is worth emphasizing that especially socially neglected minors need communication and association with your peers. After all, the group will provide them with protection, communication, psychological and moral support, all that they are deprived of normal environment [8, p. 12]. In such groups is the creation of and assimilation of own values, which very often contradict the generally accepted, which leads to the commission of offenses.

Such a group has a particularly negative impact on the formation of a person when she is influenced by professional adult criminals. Here a criminal subculture is formed and assimilated, which not only does not accepts generally accepted values and norms, but also consciously denies them, provoking at the same time active anti-social behavior.

Only in process of socialization of the person this or that form of responsibility becomes inherent in it, and accordingly feasible. Arbitrary the imposition of responsibility is contrary to the nature of man himself, and therefore not can give the expected result [9, p. 13]. The person being formed may be recognized as a subject of criminal liability from a certain age, as it acquires the required level of legal consciousness, which provides ability to realize the social and national significance of the requirements criminal law [9, p. 17].

When establishing criminal liability, the legislator cannot ignore the fact that the perpetrators are definitely different their social, psychological and other qualities. It is clear that in the law, which establishes responsibility for a crime, can not to be fully reflected the individual characteristics of each subject, who committed the crime. On the other hand, the law cannot ignore these individual features. A way out of this contradiction can be found in so that the law takes into account the characteristics that are characteristic of a particular group subjects [10, p. 22].

In this regard, the differentiation of criminal liability and punishment, first of all, should be on the basis of criminal law norms that determine the forms of criminal liability, types of punishment, applicable to certain categories of criminals taking into account them personal properties [11, p. 47].

The principle of individualization of criminal responsibility requires further development of the provisions on criminal liability minors, as it concerns the application of general rules to persons which create a certain age group that is specific features of both personal and social nature.

The Criminal Code of Ukraine of 1960 did not allocate a separate section on features criminal liability of minors. In this regard, preferential rates on the criminal liability of minors were not the only one systems. Of course, in this respect the position seems more correct of the new Criminal Code of Ukraine, which not only provides for more detailed differentiation of criminal liability of minors, but also highlighted a separate section dealing with the specifics of their responsibilities.

Let's analyze the individual age periods of personality formation and their criminal significance. To do this, contact periodization of development, which is presented in the psychological and pedagogical literature. In the interests of this work, we will limit ourselves to the following generalizations: childhood (from birth to 11–12 years); adolescence (from 11–12 years to 14–16 years); adolescence (from 16 to 21–22 years).

During childhood, a person goes a long way in his individual development from a helpless being, incapable of independent life, sufficiently adapted to nature and children's society a person who is already able to take responsibility for themselves, their loved ones and peers [12, p. 98]. Neither in terms of psychology, much less legal, minors of this age are not recognized as persons. They are considered in primarily as biological rather than social beings. All their actions are conditioned solely a biological reaction to the action of external objective factors and subject to the biological laws of development.

This characteristic of people of this age does not allow to consider them as subjects of criminal law relations. In domestic criminal science rights there has never been any doubt that persons of that age are outside the scope of criminal law, and can not under any circumstances to be recognized as subjects of a crime.

The question of the possibility of being is not so unambiguously resolved subjects of crime in adolescence, especially in adolescence adolescence (11 to 14 years). As a rule, this period of development called critical, difficult age, etc. This is due to the fact that it is on this age accounts for the most rapid biological development, in particular sexual maturity, which in turn causes significant changes in social position of a teenager.

Given the fairly significant increase in crime among minors, an increase in the number of homeless minors, the main the source of livelihood for which is begging and theft, as well as others offenses, which, given the lack of censorship, absence control over such children very often turn into crimes in the literature views on the possibility of lowering the age have recently begun to emerge criminal liability for certain types of crimes under 11–12 years of age. Attempts are being made to question the position of the current Criminal Code of Ukraine, where in Art 22 provides that, as a general rule, criminal liability subject to persons who at the time of the crime were 16 years old, and in some cases, for an exhaustive list of crimes, criminal liability can occur from the age of [13, p. 13].

However, most scientists are not so categorical address this issue. After all, to address the issue of reduction the initial age of criminal responsibility needs to be cited significantly more serious arguments than the increase in juvenile delinquency, and also their enhanced acceleration. Given this, most scientists still adheres to the position of the legislator, who has considered for over forty years the general age of criminal responsibility is 16 years old, and the reduced age is 14 years old.

The fact is that despite the acceleration of juvenile adolescents age, they are still more characterized by incomplete physical and social maturity, increased activity, emotionality, impulsiveness. These features determine that the legislator refuses to consider persons aged 11 to 14 as subjects of crime [9, p. 31].

The more it is necessary to pay attention to the fact that as shown above the commission of socially dangerous acts by adolescents of this age is a consequence of them social neglect - neglect and homelessness. Given this it is necessary to fight such manifestations of aggression by other, non-criminal legal means, and strengthening state control over such children, elimination of harmful conditions of development and education. Especially since today in the Criminal Code of Ukraine in Art. 97 provides for the possibility of application to such juvenile coercive measures of an educational nature. So, in accordance with Part 2 of Article 97 of the Criminal Code of Ukraine to a person who committed a public offense dangerous act that falls under the signs of the act provided for in a special part of this Code, before reaching the age from which it may be prosecuted, may be applied by the court coercive measures of an educational nature provided for in Part 2 of Art. 105 of the Criminal Code.

Such a legislative solution to this problem must be recognized as correct. After all, liberalism to the illegal actions of minors who have not reached the age criminal liability, and impunity for these acts are conditions that contribute to the commission of new offenses, the development of a sense of impunity. In addition, very often such persons are used by adult criminals as instruments of crime, while taking advantage of their irresponsibility. However and application of criminal liability measures to such persons, in particular, punishment can do nothing but harm children of that age. Therefore, the only possible solution in this case is to apply to individuals such an age of forced upbringing and strengthening control over their behavior.

Part 2 of Article 22 of the Criminal Code of Ukraine provides for a list of crimes, criminal responsibility for which is established from 14 years of age. Period from 14 to 16 years refers to older adolescence, which is characterized typicality of its course [9, p. 33].

To date, the legislator has significantly increased the list of crimes criminal liability for which may occur from 14 years of age, compared with the 1960 Criminal Code. However, some crimes were excluded by him of this list. Unlike the 1960 Criminal Code, the 2001 Criminal Code no longer provides responsibility from the age of 14 for murder in excess of the limits necessary defense; reckless murder; intentionally severe or moderate severity of bodily injury caused in a strong mental state excitement (the last act is generally decriminalizing); causing severe bodily injuries in excess of the limits of self-defense.

Indeed, minors of this age are still unable to comprehend the public the danger of these acts, to predict their consequences, and in some cases manage their actions in a situation of choice. It should be noted that such impossibility quite often occurs on these crimes and in case of commission their adults. Therefore, their exclusion from the list provided for in Part 2 of Art. 22 The Criminal Code of Ukraine is not accidental.

Thus, in Part 2 of Art. 22 of the Criminal Code of Ukraine, the legislator established a list those crimes for which responsibility should come at achievement 14-years of age, which not only pose a significant public danger, but and are available for awareness by adolescents of this age.

In older adolescence, from 16 years, minors become more more independent, even more formed individuals. In his behavior they are guided not only by the simplest rules. Persons of this age able to be aware of more complex social phenomena and have their own opinion about each of them. This level of development of consciousness is supported by sufficiently high volitional abilities. All this in its own right aggregate allows us to say what individuals of this age are capable of be aware of more complex social connections and the consequences of their behavior, and also manage it in a situation of choice. Actually it allowed to establish in h.1 st. 22 of the Criminal Code, as a general rule, criminal liability from 16-one year of age.

The next important issue is to address the issue of expediency addition to the Criminal Code with a list of crimes that can be committed only after reaching the age of 18. Formally in accordance with Article 22 of the Criminal Code after reaching the age of 16, it can be attracted to criminal liability for all crimes. But there are some exceptions rules follow either from other regulations or from relevant corpus delicti. So, in particular, at one time O. Ya. Svetlov, exploring the problematic issues of criminal liability for official crimes, drew attention to the fact that the subject of official crimes may be only a person who has reached 18 years of age.

In this regard, to avoid possible disputes about this problems, indeed, it is advisable to provide in the Criminal Code of Ukraine a separate article where indicate the list of crimes for which criminal liability should occur only from 18 years of age.

The next period of development is the period of adolescence. Partly we already have affected him when it came to minors aged 16 to 18 years. It the so-called early adolescence. Given the end of their main period socialization, the state continues to protect persons of this age by establishing for them preferential conditions in various areas. Of course, this should also apply criminal law.

**Conclusions.** Neither the Criminal Code of 1960 nor the Criminal Code of 2001 provide for any features criminal liability for persons aged 18 to 21 (mature youth). However, this is the approach of the Ukrainian legislator to this category of persons can hardly be considered correct. Today, when Ukraine is trying to integrate with the international community, the latter requires the harmonization of national legislation in accordance with international standards. These standards are enshrined in the international legal acts of the universal character. One of the most important acts that determine the basic principles of criminal liability of minors are Minimum UN standard rules concerning the administration of justice minors (Beijing Rules). In item 3.1. of these Rules states that States must make efforts to disseminate the

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### **ОСОБЛИВОСТІ СОЦІАЛЬНО-ПСИХОЛОГІЧНОГО РОЗВИТКУ ОСОБИ ЯК ПІДСТАВИ ВИНИКНЕННЯ КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ**

З'ясування соціально-психологічного аспекту особи завжди передбачає дослідження закономірностей формування її певної внутрішньої структури та виконання нею функції регулятора поведінки. Формування цієї структури особи відбувається поступово з моменту її народження під впливом різноманітних факторів.

Щоб бути суб'єктом будь-яких суспільних відносин, людина повинна досягти певного рівня психофізичного та соціального розвитку, який дасть їй можливість усвідомлювати свою поведінку та керувати нею, а отже, і відповідати за неї.

Така поступовість розвитку людини як свідомого суб'єкта суспільного життя зумовлює спроби законодавця встановити як одну із гарантій принципу винної відповідальності її вікові межі. Тим самим законодавець намагається вилучити зі сфери застосування кримінально-правових заходів дітей та підлітків, типовий рівень розвитку яких породжує неспростовні сумніви в тому, що вони під час вчинення діянь, заборонених кримінальним законом, усвідомлювали характер та значення своїх дій або керували ними в ситуації вибору.

Ні КК 1960 р., ні КК 2001 р. не передбачають жодних особливостей кримінальної відповідальності щодо осіб віком від 18 до 21 року (зрілої юності). Проте такий підхід українського законодавця до цієї категорії осіб навряд чи можна визнати правильним. Сьогодні, коли Україна намагається інтегруватися з міжнародною спільнотою, остання вимагає узгодження національного законодавства із міжнародними стандартами. Ці стандарти закріплено в універсальних міжнародно-правових актах. Одним із таких найважливіших актів, що визначають основні принципи кримінальної відповідальності неповнолітніх, є Мінімальні стандартні правила ООН, які торкаються відправлення правосуддя щодо неповнолітніх (Пекінські правила). В п. 3.1 цих Правил зазначено, що держави повинні докладати зусиль для поширення дії принципів, викладених у Правилах, на молодих повнолітніх правопорушників. Отже, доповнення КК такою вказівкою повністю відповідатиме Пекінським правилам.

**Ключові слова:** відповідальність; особа; покарання; правопорушник; злочин.